BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2001-31-C - ORDER NO. 2001-328

APRIL 16, 2001

IN RE: Petition of ALLTEL Communications, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 Respecting an Interconnection Agreement with BellSouth Telecommunications, Inc.	)))))	ORDER ON ARBITRATION

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Arbitration ("Petition") filed by ALLTEL Communications, Inc. ("ALLTEL") for arbitration of certain issues pertaining to the terms and conditions of a new interconnection agreement between ALLTEL and BellSouth Telecommunications, Inc. ("BellSouth"). Pursuant to their existing interconnection agreement and Section 252 of the federal Telecommunications Act of 1996 ("1996 Act"), ALLTEL and BellSouth began negotiations on the terms and conditions of a new interconnection agreement to become effective upon the expiration of the existing agreement. This proceeding arose after ALLTEL and BellSouth were unable to reach agreement on all issues despite good faith negotiations. On January 12, 2001, ALLTEL filed its Petition regarding those issues which ALLTEL and BellSouth were not able to resolve. The Petition was filed pursuant to the provisions of Section 252 of the 1996 Act. While the Petition did not set forth with particularity the specific issues that

ALLTEL wants the Commission to resolve, Exhibit B to the Petition set forth forty-two references to sections of the proposed interconnection agreement which contain disputed language or positions. On February 5, 2001, BellSouth timely filed its Response to ALLTEL's Petition. By its Response, BellSouth set forth twenty-seven unresolved or "open" issues.[1]

Negotiations between ALLTEL and BellSouth continued after the filing of the Petition. At the time of the hearing, the parties had resolved twenty-five of the issues originally enumerated and only seventeen issues remained to be addressed in the arbitration proceeding.

The hearing on this Arbitration was held on March 19, 2001, with the Honorable William Saunders, Chairman, presiding. At the hearing, ALLTEL was represented by D. Reece Williams, III, Esquire and Stephen Refsell, Esquire. BellSouth was represented by Caroline N. Watson, Esquire, William F. Austin, Esquire, and Andrew D. Shore, Esquire. ALLTEL presented as its witness Jayne Eve and offered the direct and rebuttal testimony of Ms. Eve.[2] BellSouth presented as witnesses Cynthia W. Cox and W. Keith Milner and offered the direct testimony of both witnesses and the surrebuttal testimony of Ms. Cox.[3]

[1] BellSouth states in its Response that the parties continued to negotiate after the filing of the Petition and were able to resolve certain issues. In its Response, BellSouth "maintained" the use of the issue number from ALLTEL's "issues matrix" rather than renumbering the remaining unresolved issues. As some of the remaining issues contain subparts, the Issues will be identified, throughout this Order, by the number as designated in BellSouth's Response.

[2] ALLTEL prefiled with the Commission and served BellSouth with the direct testimony of Ms. Eve on February 22, 2001, and ALLTEL prefiled and served the rebuttal testimony of Ms. Eve on March 12, 2001.

[3] BellSouth prefiled with the Commission and served ALLTEL with the direct testimony of Ms. Cox and Mr. Milner on March 8, 2001, and BellSouth prefiled and served the surrebuttal testimony of Ms. Cox on March 14, 2001.

During the hearing, each of the parties' witnesses presented summaries of their prefiled testimony. All prefiled testimony and accompanying exhibits were admitted into the record without objection. The parties conducted cross-examination on the first ten issues but agreed to waive cross-examination on the last seven issues and to address those issues in the post-hearing briefs. Following the hearing, both parties were afforded the opportunity to file post-hearing briefs and proposed orders. ALLTEL filed a brief, and BellSouth filed a brief and a proposed order.

II. LEGAL STANDARDS AND PROCESSES FOR ARBITRATION UNDER THE 1996 ACT

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.[4] After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.[5] The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.[6] The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties."[7] A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.[8]

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[4] 47 U.S.C. § 251(c)(1).
[5] 47 U.S.C. § 251(b)(2).
[6] *See generally,* 47 U.S.C. §§ 252(b)(2)(A) and 252(b)(4).
[7] 47 U.S.C. § 252(b)(2).
[8] 47 U.S.C. § 252(b)(3).

The 1996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and the response.[9]

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, those sections then form the basis for arbitration. Once the Commission provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval.[10]

The purpose of this arbitration proceeding is the resolution by the Commission of the remaining disputed issues set forth in the Petition and Response.[11] Under the 1996 Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission ("FCC") regulations pursuant to Section 252; shall establish rates according to the provisions of Section 252(d) for interconnection, services, and network elements; and shall provide a schedule for implementation of the terms and conditions by the parties to the Agreement.[12]

III. ISSUES

As noted above, ALLTEL's Petition sets forth forty-two areas of disagreement, identified as Issues 1 – 42 in Exhibit B to the Petition. Prior to the hearing ALLTEL and BellSouth resolved twenty-five of those issues. Therefore, seventeen issues remain for

[9] 47 U.S.C. § 252(b)(4).
[10] 47 U.S.C. § 252(e).
[11] 47 U.S.C. § 252 (b)(4)(c).
[12] 47 U.S.C. § 252(c).

the Commission to resolve. The issues which the Commission must resolve are set forth as follows:

Issue 3: How should parity be defined?

Issue 4: Should BellSouth be required to provide ALLTEL a verification list of ALLTEL's white pages directory subscriber listings for ALLTEL's review and modification prior to publishing?

Issue 5: Under what terms should ALLTEL be able to purchase additional customer guide pages in the informational section of the BellSouth White Pages?

Issue 6: Under what terms should ALLTEL be able to purchase White Pages directory books?

Issue 8: Should BellSouth be required to post directory listings to a website for ALLTEL's viewing?

Issue 9: Should BellSouth be required to provide ALLTEL with the publication schedule for the White Pages directory listing?

Issue 13(a): Should ALLTEL be permitted to opt into another CLEC's interconnection agreement when there is less than six months remaining on the term of such agreement?

Issue 13(b): Should there be any limitations on ALLTEL's ability to pick and choose provisions of other CLEC's interconnection agreements?

Issue 14(a): Should ALLTEL be allowed to substitute more favorable terms from an interconnection agreement between BellSouth and another CLEC without amending

its agreement with BellSouth, and to have the effective date of such terms retroactive to the date of the agreement from which it selected the provisions?

Issue 17: Should BellSouth be forced to forego the non-recurring charge for Order Coordination – Time Specific service orders if the parties reschedule the conversion because BellSouth is unable to perform the conversion within one hour of the time specified on the order?

Issue 18: When ALLTEL reports a trouble on a loop and no trouble is found by BellSouth, should BellSouth be required to reopen the same trouble ticket if ALLTEL cannot determine the problem within 48 hours after the ticket is closed?

Issue 23: What terms and conditions should govern BellSouth's provisioning of enhanced extended loops (EELs) and other combinations of network elements to ALLTEL?

Issue 25: Can ALLTEL petition this Commission for a waiver when it seeks to convert tariffed special access services to UNEs or UNE combinations that do not qualify under any of the three safe harbor options set forth in the agreement?

Issue 34: Can ALLTEL require BellSouth to install an access card security system?

Issue 39: Should BellSouth's Products and Services Interval Guide be incorporated into the interconnection agreement?

Issue 40: When should enforcement mechanisms for service quality measurements become effective?

Issue 42: What is the relevant period for determining whether penalties for failure to meet service quality measurements should be assessed?

IV. DECISION ON THE ISSUES

In this section, we will address and resolve the open issues that have not been settled by negotiation and, therefore, must be resolved by the Commission pursuant to Section 252(b)(4) of the 1996 Act.

Issue 3: How should parity be defined?

ALLTEL's Position:

In Exhibit B to its Petition, ALLTEL asserts that additional language is needed to clarify the meaning of parity.[13]

BellSouth's Position:

In its Response, BellSouth states its position with regard to Issue 3 as follows:

> BellSouth has offered to include language in the interconnection agreement consistent with the 1996 Act and the FCC's rules regarding parity of services (47 C.F.R. § 51.311 (UNEs) and 47 C.F.R. § 51.603 (resale)). The Act does not require BellSouth to provide ALLTEL with service at levels greater than BellSouth provides to its own end users, nor does it make BellSouth responsible for whether ALLTEL meets its service requirements.[14]

Discussion:

This issue involves a dispute over proposed contract language by ALLTEL in Section 7 of the General Terms and Conditions ("GT&Cs") of the proposed Interconnection Agreement. Section 7 concerns the definition of "parity." Both ALLTEL

[13] Petition, Exhibit B, p. 1.
[14] Response, p. 7.

and BellSouth agree that BellSouth is required by the 1996 Act to provide services, unbundled network elements ("UNEs") and interconnection to ALLTEL at "parity" with what BellSouth provides to itself and its end users. This obligation arises from the requirement set forth in Section 252 of the 1996 Act that BellSouth provide services, UNEs, and interconnection to CLECs in a "nondiscriminatory" manner.

ALLTEL asserts that parity and/or nondiscrimination is not the only provisioning obligation BellSouth must meet regarding the manner in which BellSouth is to provide ALLTEL access to services and facilities. ALLTEL asserts that the 1996 Act requires BellSouth to provide such access at rates and terms and conditions that are just and reasonable.

ALLTEL raises three provisioning disputes arising under this Issue. The first involves Resale services. ALLTEL requests that the Interconnection Agreement contain a sentence that reads "[i]n connection with resale, BellSouth will provide ALLTEL with pre-ordering, ordering, maintenance and trouble reporting, and daily usage data functionality so as not to prevent ALLTEL from providing equivalent levels of customer service to their local exchange customers as BellSouth provides to its own end users." BellSouth disagrees with the inclusion of this sentence. The second dispute involves ALLTEL's proposed language involving a clause which ALLTEL asserts addresses BellSouth's obligation to provide ALLTEL with access to UNEs. The sentence at issue, where both parties agree to the text in normal type and the additional language proposed by ALLTEL and rejected by BellSouth in underlined type, reads as follows:

> To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by

> BellSouth to ALLTEL shall be at least equal in quality to that which BellSouth provides to itself, its affiliates or any other telecommunications carrier and in any event in a sufficient timely fashion so as not to prevent ALLTEL from providing timely service to ALLTEL end users consistent with Commission requirements.

The third dispute arising under Issue 3 concerns local number portability with ALLTEL requesting that local number portability be included in the sentence addressing the quality of the interconnection between the network of BellSouth and the network of ALLTEL. The disputed language reads "[t]he quality of the interconnection and local number portability between the networks of BellSouth and the network of ALLTEL shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an affiliate, or any other party." While both parties agree to the text in normal type, ALLTEL requests that the sentence include the underlined phrase.

BellSouth argues that ALLTEL's proposed language improperly requires BellSouth to guarantee service levels at which ALLTEL will provide service to ALLTEL's customers. In other words, BellSouth asserts that the additional language requires BellSouth to provide more than "parity." ALLTEL, on the other hand, asserts that the additional language only incorporates terms and conditions into the Interconnection Agreement regarding BellSouth's provisioning obligations which are "just and reasonable." ALLTEL asserts that the proposed language only imposes a standard of parity that is violated if BellSouth, despite providing services to ALLTEL at parity with itself, also does something else affirmatively to prevent ALLTEL's customers from receiving customer service on parity with BellSouth's customers. ALLTEL also

asserts that the proposed language requires BellSouth to commit to not being the sole cause of preventing ALLTEL from meeting Commission service requirements.

The FCC explained the proper inquiry to determine whether an ILEC is providing access in a nondiscriminatory manner, i.e., at parity, most recently in its orders approving applications by other Bell Operating Companies ("BOCs") to provide interLATA services pursuant to Section 271 of the Act. The FCC explained that to satisfy this standard, "the BOC must provide access to competing carriers in 'substantially the same time and manner' as it provides to itself. Thus, where a retail analog exists, a BOC must provide access equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers or its affiliates, in terms of quality, accuracy and timeliness.[15]

ALLTEL's witness, Ms. Eve, acknowledged on cross-examination that BellSouth agrees to meet this standard.[16] Specifically, BellSouth's proposed contract language obligates it to provide services, UNEs and interconnection that "are equal in quality, subject to the same conditions and provided with the same provisioning time intervals that BellSouth provides to its affiliates, subsidiaries and end users."[17]

Ms. Eve admitted at the hearing that ALLTEL wants BellSouth to agree to a higher standard, however.[18] ALLTEL wants to obligate BellSouth to provide ALLTEL with services, UNEs and interconnection so as to ensure that ALLTEL meets the

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[15] *See In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999), ¶ 44. (*"Bell Atlantic New York 271 Order"*).
[16] Tr. at 138.
[17] Tr. at 21-22.
[18] Tr. at 138-139.

Commission's service requirements in providing services to its end users. There is no requirement that BellSouth assume responsibility for what ALLTEL does when it uses parts of BellSouth's network to provide service to ALLTEL customers. Indeed, ALLTEL does not cite any authority to support its attempt to hold BellSouth to a higher standard than is required by the Act. Moreover, Ms. Eve conceded in responding to a questioning that she did not know if BellSouth had ever provided ALLTEL with services, UNEs or interconnection in a manner that prevented ALLTEL from meeting the Commission's service requirements.[19]

ALLTEL's only argument in support of its position is that "[t]he Act requires more than just parity" and that the parity standard in the parties' agreement must be a "just and reasonable term."[20] While the Act does require more than just parity, Section 7 of the General Terms & Conditions of the parties' agreement does not address all of BellSouth's myriad obligations under the Act. Ms. Eve agreed on cross-examination that the sole purpose of Section 7 is to define parity.[21]

BellSouth is not required to ensure that ALLTEL meet the Commission's service requirements. Neither is BellSouth required to provide substantially more to a CLEC than it provides to its retail analog. As noted above, the FCC has explained that "the BOC must provide access to competing carriers in 'substantially the same time and manner' as it provides to itself ... a BOC must provide access equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers or its

[19] Tr. at 164-165.
[20] Tr. at 23.
[21] Tr. at 137.

affiliates, in terms of quality, accuracy and timeliness."[22] It would be unjust and unreasonable for this Commission to impose a parity standard on BellSouth that exceeds what is required under the Act.

In reviewing the proposed language to the Interconnection Agreement, the Commission concludes that the first two proposals would obligate BellSouth to provide more than parity regarding access to services. BellSouth is not required under the 1996 Act to provide services at levels superior to the services it provides to itself, its affiliates, and its end users. To include the ALLTEL's proposed language that provides "so as not to prevent ALLTEL from providing equivalent levels of customer service to their local exchange customers as BellSouth provides to its own end users" and "in a sufficient timely fashion so as not to prevent ALLTEL from providing timely service to ALLTEL end users consistent with Commission requirements" would require BellSouth to provide more than parity. Further, the proposed language could require BellSouth to guarantee the service levels at which ALLTEL provides services and to guarantee that ALLTEL provides ALLTEL's customers timely service in compliance with Commission requirements. BellSouth has no obligation to be a guarantor of the service levels provided by ALLTEL to its end users. Therefore, the Commission finds that the language proposed by ALLTEL should not be included in the Interconnection Agreement.

With regard to the proposal that "local number portability" be included in the sentence addressing the quality of the interconnection between the network of BellSouth

[22] *See Bell Atlantic New York 271 Order*, ¶ 44.

and the network of ALLTEL, the Commission finds that this proposal should be adopted. The Commission believes that local number portability is a requirement of the 1996 Act which must meet the parity standard of the 1996 Act. To include the phrase "local number portability" in the definition of "parity" in the interconnection agreement does not require BellSouth to provide any more than is required of BellSouth under the 1996 Act. Therefore, the Commission concludes that the phrase "local number portability" should be included in the Interconnection Agreement.

Therefore, with respect to the definition of "parity," the Commission concludes that the parties should include (1) BellSouth's suggested language with respect to the first dispute involving Resale services, (2) BellSouth's suggested language with respect to Network Elements, and (3) ALLTEL's suggested language with respect to local number portability.

Directory Issues (Issues 4, 5, 6, 8, and 9):[23]

Issue 4: Should BellSouth be required to provide ALLTEL a verification list of ALLTEL's white pages directory subscriber listings for ALLTEL's review and modification prior to publishing?

ALLTEL's Position:

ALLTEL states its position in Exhibit B to its Petition as "ALLTEL is proposing language regarding the white page directory verification list, its distribution to ALLTEL,

[23] In deciding to address these five issues as a group, the Commission not only recognizes the relationship of these issues to each other but also notes that the parties have treated these five issues as a group. At the arbitration hearing, the parties agreed to address these five issues as a group. Further, in the briefs submitted by the parties, the parties addressed these five issues as a group.

and what info[rmation] is provided, timing of edits, etc. so that it will be part of this Agreement."[24]

BellSouth's Position:

By its Response, BellSouth describes its position as follows:

> This issue is not appropriate for a Section 252 arbitration proceeding. Section 251(b)(3) of the 1996 Act requires BellSouth to provide CLECs with non-discriminatory access to directory listings. BellSouth provides ALLTEL with nondiscriminatory access to directory listings. Thus, BellSouth has satisfied its obligations under Section 251 of the 1996 Act.[25]

Issue 5: Under what terms should ALLTEL be able to purchase additional customer guide pages in the informational section of the BellSouth White Pages?

ALLTEL's Position:

By its Petition as stated in Exhibit B, ALLTEL states its position on this issue as "ALLTEL is proposing terms for Customer Guide pages in the white page directory."[26]

BellSouth's Position:

According to its Response, BellSouth states its position on Issue 5 as follows: "[t]his issue is not appropriate for a Section 252 arbitration. See BellSouth's position with respect to Issue No. 4."[27]

Issue 6: Under what terms should ALLTEL be able to purchase White Pages directory books?

ALLTEL's Position:

ALLTEL states its position in Exhibit B to its Petition as "ALLTEL is proposing

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[24] Petition, Exhibit B, p. 1.
[25] Response, pp. 7-8.
[26] Petition, Exhibit B, p.1.
[27] Response, p. 5.

language that allows it to purchase directory books in bulk at an additional charge."[28]

BellSouth's Position:

According to its Response, BellSouth states its position on Issue 6 as follows: "[t]his issue is not appropriate for a Section 252 arbitration. See BellSouth's position with respect to Issue No. 4."[29]

Issue 8: Should BellSouth be required to post directory listings to a website for ALLTEL's viewing?

ALLTEL's Position:

In Exhibit B to its Petition, ALLTEL's position is that

> [BellSouth] will post directory listings to a secure website for on-line viewing by ALLTEL. This will permit periodic verification/correction of any listing information, rather than waiting for the proof list once a year from [BellSouth].[30]

BellSouth's Position:

According to its Response, BellSouth states its position on Issue 8 as follows: "[t]his issue is not appropriate for a Section 252 arbitration. See BellSouth's position with respect to Issue No. 4."[31]

Issue 9: Should BellSouth be required to provide ALLTEL with the publication schedule for the White Pages directory listing?

ALLTEL's Position:

In Exhibit B to its Petition, ALLTEL states its position on Issue 9 as

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[28] Petition, Exhibit B, p. 1.
[29] Response, p. 9.
[30] Petition, Exhibit B, p. 1.
[31] Response, p. 9.

"[p]ublication schedule will be provided by [BellSouth]."[32]

BellSouth's Position:

According to its Response, BellSouth states its position on Issue 9 as follows: "[t]his issue is not appropriate for a Section 252 arbitration. See BellSouth's position with respect to Issue No. 4."[33]

Discussion:

As Issues 4, 5, 6, 8, and 9 all concern directory issues, the Commission will address these issues as a group. ALLTEL asserts that Issues 4, 5, 6, 8, and 9 "all relate to BellSouth's obligation under 47 U.S.C. § 251(b)(3) to provide ALLTEL with nondiscriminatory access to directory listings and BellSouth's related obligation under § 251(c)(1) to negotiate with ALLTEL in good faith . . . ."[34] ALLTEL further claims that BellSouth has refused to negotiate with ALLTEL regarding these issues on the basis that these are matters between ALLTEL and BellSouth Advertising and Publishing Corporation ("BAPCO").[35] BellSouth asserts that it has no obligation to negotiate regarding these issues as these issues are directory publishing issues and do not relate to BellSouth's obligation under the 1996 Act to provide nondiscriminatory access to directory listings. BellSouth admits that it refused to negotiate these issues with ALLTEL, but BellSouth asserts that it has no obligation under the 1996 Act to negotiate these issues regarding directory publishing.

[32] Petition, Exhibit B, p. 1.
[33] Response, pp. 9-10.
[34] Tr. at 24-25.
[35] Tr. at 25.

ALLTEL witness Eve testified that ALLTEL must receive access to directory listings in a manner that is accurate, complete, and reliable in order to ensure current and potential end users that a change in local service providers does not carry an unnecessary risk that the end user will be omitted or misrepresented in directory listings.[36] To reduce what witness Eve describes as "risks inherent in the current process," ALLTEL proposed language to permit ALLTEL to verify the accuracy of the directory listing submitted to BAPCO (Issue 4) and to assure that the information received by BAPCO has been accurately merged with the BellSouth listings (Issue 8).[37] Further, ALLTEL proposed language that would guarantee ALLTEL the ability to purchase consumer guide pages, containing information on billing, repair, and other service topics, on equal terms as provided to BellSouth (Issue 5).[38] ALLTEL also proposed language that would require BellSouth to provide for the bulk purchase of directories by ALLTEL (Issue 6) and language that would obligate BellSouth to provide notice of the directory publication schedule (Issue 9).[39]

BellSouth witness Cox opined that BellSouth provides CLECs with nondiscriminatory access to directory listings and that ALLTEL inappropriately seeks to extend BellSouth's obligations to directory publishing issues.[40] Ms. Cox stated that BellSouth is only required to include CLECs' subscriber listings in BellSouth's white

[36] Tr. at 26.
[37] Tr. at 27.
[38] Tr. at 29.
[39] Tr. at 30-31.
[40] Tr. at 85.

pages directory listings and offered that ALLTEL is free to negotiate its requests directly with BAPCO, BellSouth's directory publishing affiliate.[41]

BellSouth contracts with BAPCO to publish BellSouth's directory listings.[42] ALLTEL also has a contract with BAPCO that sets forth the specific terms pursuant to which BAPCO includes listings of ALLTEL customers in the directories BAPCO publishes.[43] A copy of ALLTEL's agreement with BAPCO was introduced into evidence during Ms. Eve's cross-examination.[44]

Each of the issues ALLTEL attempts to raise in this arbitration are addressed in the contract between ALLTEL and BAPCO.[45] ALLTEL has not alleged that it has encountered any problems in working with BAPCO. Indeed, Ms. Eve testified that BAPCO has worked with ALLTEL pursuant to their publishing contract to ensure that ALLTEL's end user information is published correctly in the BAPCO directories.[46]

Section 251(c)(1) of the Act imposes on BellSouth the duty to negotiate in good faith with respect to its obligations under Sections 251(b) and (c) only.[47] Section 251(b)(3), which is the provision Ms. Eve relies on for her position, requires BellSouth to provide ALLTEL with nondiscriminatory access to directory listings. It does not, as Ms. Eve acknowledged, impose on BellSouth any obligations with respect to directory publishing, nor does it even mention directory publishing.[48] Thus, the 1996 Act imposes

[41] Tr. at 87.
[42] Tr. at 170.
[43] Tr. at 170-171.
[44] *See* Hearing Exhibit No. 6.
[45] Tr. at 171-176.
[46] Tr. at 28, 172.
[47] Tr. at 169.
[48] Tr. at 170.

no obligation upon BellSouth to negotiate with respect to directory publishing details. BellSouth agrees to provide ALLTEL with nondiscriminatory access to its directory listings, a fact Ms. Eve readily conceded.[49] Thus, BellSouth has satisfied its obligation under Section 251(b)(3).

In its *Texas 271 Order*, the FCC stated

> In the *Second BellSouth Louisiana Order*, the [FCC] concluded that, "consistent with the [FCC's] interpretation of 'directory listing' as used in section 251(b)(3), the term 'white pages' in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider." We further concluded, "the term 'directory listing,' as used in this section, includes, at a minimum, the subscriber's name, address, telephone number, or any combination thereof."[50]

A footnote to the last sentence of the above quote provides

> We note that in the *Second BellSouth Louisiana Order*, we stated that the definition of "directory listing" was synonymous with the definition of "subscriber list information." However, the [FCC's] decision in a recent proceeding obviates this comparison and supports the definition of directory listing delineated above. (internal citations omitted)[51]

The FCC further provided in the *Texas 271 Order* that

> In the *Second BellSouth Louisiana Order*, the Commission found that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provided white page listings for

[49] Tr. at 170; *See*, General Terms and Conditions § 13.1.
[50] *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC. Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, (rel. June 30, 2000) ¶ 353. ("*Texas 271 Order*").
[51] *Id.*, footnote 986.

> competitors' customers with the same accuracy and reliability that it provides its own customers.[52]

As evidenced by orders of the FCC, the standard of nondiscriminatory access to directory listings does not extend to the areas asserted by ALLTEL. In considering a BOCs 271 application to provide in-region interexchange services, the FCC finds compliance with the BOCs obligation under the 1996 Act upon a demonstration that the BOC provides nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers and provides those white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers. The FCC standard does not go to directory publishing issues, which is the situation before this Commission with regard to the instant issues.

This Commission has previously ruled that directory publishing details which go beyond BellSouth's obligation to provide nondiscriminatory access to white pages listings are matters that are not subject to arbitration. In our March 10, 1997 Order No. 97-198 in the first AT&T arbitration, this Commission, addressing a similar issue, stated: "This issue is not subject to arbitration . . . ." Directory publishing is a private matter which should be negotiated between AT&T and BAPCO or another publisher."[53] While not dispositive of this issue, it is interesting to note that Ms. Eve testified that she

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[52] *Id.* at ¶ 354.

[53] "Order on Arbitration,"(Order No. 97-189) (March 10, 1997), In Re Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc., SC PSC Docket No. 96-358-C, p. 9; *See also BAPCO v. Tennessee Regulatory Authority,* 2001 WL 134603 (Feb. 16, 2001)(holding that directory publishing issues which go beyond BellSouth's duty to provide directory listings are not subject to arbitration).

was not aware of any State commission or court decision requiring an ILEC to include ALLTEL's proposed language in an interconnection agreement.[54]

Based on the foregoing, the Commission concludes that BellSouth's obligations under the 1996 Act require it to provide nondiscriminatory access to directory listings. However, this obligation does not extend to directory publishing issues. Just as BellSouth contracts with BAPCO to publish BellSouth's directory listings, ALLTEL is free to contract with BAPCO. ALLTEL can certainly address these directory publishing issues with BAPCO, but it is not appropriate for these issues to be decided in the context of an arbitration proceeding. Directory publishing is a private matter to be negotiated between the carrier and the directory publisher. Therefore, the Commission rules that the directory publishing issues raised by ALLTEL are not subject to arbitration.

Issue 13(a): Should ALLTEL be permitted to opt into another CLEC's interconnection agreement when there is less than six months remaining on the term of such agreement?

ALLTEL's Position:

Exhibit B to ALLTEL's Petition lists Issue 13 as a single issue and states ALLTEL's position as follows: "ALLTEL instead proposes the adoption of language without [BellSouth]-added terms or restrictions that are not specified by law."[55]

BellSouth's Position:

By its Response, BellSouth states its position on Issue 13(a) as "ALLTEL should not be allowed to opt into an existing interconnection agreement that has less than six

[54] Tr. at 178.
[55] Petition, Exhibit B, p. 2.

months to run before it expires."[56]

Discussion:

Section 252(i) of the Act allows a CLEC to adopt for itself the interconnection agreement between BellSouth and another CLEC, or particular terms from another agreement. ALLTEL proposes language in the GT&C, Section 241 allowing ALLTEL to "opt into" the terms and conditions of any other Commission approved BellSouth interconnection agreement, as follows: "BellSouth shall to the extent required by law make available to ALLTEL, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252." BellSouth proposed language that included a six-month prior-to-termination time restriction on ALLTEL's ability to opt into another agreement. The parties agree that gravamen of Issue 13(a) is to define what is a "reasonable period of time" for agreements to be available to other CLECs.

ALLTEL's witness, Ms. Eve, acknowledged that some time limitation on opt-ins is appropriate.[57] On cross examination, Ms. Eve acknowledged that ALLTEL's proposed language does not contain any limitation, such that ALLTEL could opt into another agreement at any time before an agreement expires.[58] On cross examination, Ms. Eve admitted that certain time frames of opting into an agreement could be unreasonable.[59] However, Ms. Eve also testified that there may be situations which are

[56] Response, p. 10 and Issues Matrix, p3.
[57] Tr., p. 186.
[58] *See* Tr., pp. 186-187.
[59] *Id.*

less than six months before the termination of the agreement where opt-in would not be unreasonable and would be beneficial to all the parties.[60]

In support of BellSouth's position, witness Cox explained that BellSouth's interconnection agreements generally require that the parties begin negotiating a new agreement no later than six months before expiration of the agreement.[61] Thus, if ALLTEL were to opt into an existing agreement with fewer than six months remaining, ALLTEL would be required to commence negotiations for a new agreement immediately.[62] Thus, BellSouth asserts that it would be inefficient and burdensome for BellSouth to execute, file and administer new agreements with terms of less than six months.[63]

47 C.F.R. § 51.809(c) provides that "[i]ndividual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the [1996] Act." In asserting that a six-month prior-to-termination restriction is reasonable, BellSouth relies on the fact that its interconnection agreements generally require the parties to begin re-negotiations when six months remain on the term of the agreement and on a decision of the Maryland Public Service Commission.[64] ALLTEL on the other hand, asserts that the

[60] Tr., p. 32.
[61] Tr., p. 89.
[62] *Id.*
[63] *Id.*
[64] Witness Cox in her testimony referenced the decision of the Maryland Public Service Commission. According to witness Cox in the decision of *In re: Petition of Global NAPS South, Inc. for Arbitration of Interconnection Rates, Term and Conditions*, 90 Md. P.S.C. 48 (July 15, 1999), on appeal to Maryland state court, the Maryland PSC found it unreasonable to allow a CLEC to opt into a three year interconnection agreement approximately two and one-half years after its approval.

six-month prior-to-termination language proposed by BellSouth is not allowed by applicable law.

Upon consideration of this Issue, the Commission finds that the Interconnection Agreement should not contain a six-month prior-to-termination restriction. While the Commission recognizes that there should be some limit on the length of time to opt into an interconnection agreement, the Commission further recognizes that a six-month time period may not be reasonable in all circumstances. Therefore, the Commission rejects the language proposed by BellSouth. The language of the FCC rule provides that opt-in may occur within " a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the [1996] Act."[65] A reasonable opt-in time will depend upon the circumstances of a particular case. What may be reasonable in one situation may not be reasonable in another situation. Therefore, the Commission directs the parties to include language in the Interconnection Agreement that is reflective of the FCC's rule.

Issue 13(b): Should there be any limitations on ALLTEL's ability to pick and choose provisions of other CLEC's interconnection agreements?

ALLTEL's Position:

Exhibit B to ALLTEL's Petition lists Issue 13 as a single issue and states ALLTEL's position as follows: " ALLTEL instead proposes the adoption of language without [BellSouth]-added terms or restrictions that are not specified by law."[66]

[65] 47 C.F.R. § 51.809(c).
[66] Petition, Exhibit B, p. 2.

BellSouth's Position:

BellSouth's position on Issue 13(b) as stated in its Response is that "BellSouth can require ALLTEL to accept all terms that are legitimately related to the terms ALLTEL desires to adopt for itself."[67]

Discussion:

The dispute in Issue 13(b) requires the Commission to determine whether it should adopt contractual language that is broad and general, or language that is more specific and less subject to interpretation and dispute later. ALLTEL proposes the general language -- that its pick and choose rights be consistent with " the law pursuant to §252 and the FCC rules and regulations." BellSouth proposes language providing that when ALLTEL adopts a term from another CLEC's agreement, it must also accept all terms that "are legitimately related to or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted."

ALLTEL's witness, Ms. Eve, testified on cross-examination that, if the FCC rules or other legal authority require ALLTEL to adopt all terms that are legitimately related to or were negotiated in exchange for or in conjunction with the term ALLTEL seeks to adopt, then ALLTEL would not object to including BellSouth's proposed language in the agreement.[68] However, Ms. Eve also stated that ALLTEL objects to BellSouth's proposed language as the language goes beyond that required for both parties to carry out the original intent of their interconnection agreement and the agreed

[67] Response, p. 12.
[68] Tr. at 187.

upon terms as required by the law and the FCC rules and regulations regarding availability.[69]

In its *First Report and Order*[70], the FCC concluded that an ILEC could require a third party to agree to certain terms and conditions in order to exercise its rights under Section 252(i) of the Act if such terms and conditions were "legitimately related" to the term the third party desired to adopt.[71] In its *First Report and Order*, the FCC stated

> we conclude that the "same terms and conditions" that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service, or element being requested under section 252(i). For instance where an incumbent LEC and a new entrant have agreed upon a rate contained in a five-year agreement, section 252(i) does not necessarily entitle a third party to receive the same rate for a three-year commitment. Similarly, that one carrier has negotiated a volume discount on loops does not automatically entitle a third party to obtain the same rate for a smaller amount of loops. Given the primary purpose of section 252(i) of preventing discrimination, we require incumbent LECs seeking to require a third party to agree to certain terms and conditions to exercise its rights under section 252(i) to prove to the state commission that the terms and conditions were legitimately related to the purchase of the individual element being sought. By contrast, incumbent LECs may not require as a "same" term or condition the new entrant's agreement to terms and conditions relating to other interconnection, services, or elements in the approved agreement.[72]

While the language proposed by BellSouth may be, as asserted by BellSouth, consistent with "the law and FCC rules," the Commission finds that the additional

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[69] Tr. at 34.
[70] *First Report and Order*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996). ("*First Report and Order*").
[71] *First Report and Order* at ¶ 1315. *See also AT&T Corp v. Iowa Utils. Board*, 525 U.S. 366, 396, 119, S.Ct. 721, 738 (1999) (noting ability of ILEC to require CLEC to adopt all terms legitimately related to desired term).
[72] *First Report and Order*, ¶ 1315.

language is unnecessary. As illustrated above by the quoted portion of the FCC's *First Report and Order*, the FCC made clear what is required by the parties. The Commission therefore orders the parties to include in their Interconnection Agreement language that the ability to pick and choose provisions from another CLEC's interconnection agreement is limited to the extent required by law pursuant to 47 U.S.C. 252 and the FCC's rules and regulations.

Issue 14(a): Should ALLTEL be allowed to substitute more favorable terms from an interconnection agreement between BellSouth and another CLEC without amending its agreement with BellSouth, and to have the effective date of such terms retroactive to the date of the agreement from which it selected the provisions?

ALLTEL's Position:

ALLTEL's position on Issue 14(a) is that "ALLTEL is adding opt-in language."[73]

BellSouth's Position:

BellSouth's position on Issue 14(b) is as follows:

> First, BellSouth agrees to make available, pursuant to Section 252(i) of the 1996 Act and 47 C.F.R. § 51.809 any interconnection, service, or network element provided under any Commission-approved agreement to which it is a party at the same rates, terms and conditions as provided in that agreement. When ALLTEL selects such terms, it should be required to amend its interconnection agreement to effectuate its adoption of these additional terms. The parties' relationship is governed by the contract, and changes to the relationship should properly be affected only by amending the contract. ....
>
> Second, the adoption or substitution of a specific provision contained in a previously approved agreement is effective on the date the amendment memorializing the adoption is signed by BellSouth and the adopting CLEC.[74]

[73] Petition, Exhibit B, p. 2.
[74] Response, pp. 12-13.

Discussion:

According to ALLTEL's witness Eve, "if BellSouth voluntarily grants or is required to grant terms and conditions to another CLEC during the term of BellSouth's agreement with ALLTEL, which are more favorable than ALLTEL's, ALLTEL would like and is legally entitled to the benefit of those terms and conditions as soon as possible and no later than its competing CLEC gets them from BellSouth."[75] Thus ALLTEL proposes language to the Interconnection Agreement that would make the effective date of any substituted terms and conditions to be the later of either the Interconnection Agreement's effective date or the effective date of the third parties' provisions.[76]

In other words, ALLTEL contends that when it adopts terms from another CLEC's agreement with BellSouth pursuant to section 252(i) of the Act, those terms should apply to ALLTEL's agreement retroactively, rather than becoming effective on the date ALLTEL and BellSouth execute a contractual amendment memorializing the adoption.[77] Therefore, under ALLTEL's position, if ALLTEL had a 2 year agreement with BellSouth effective January 1, 2001, and CLEC X had a 2 year agreement with BellSouth effective February 1, 2001, ALLTEL could wait until June 1, 2002, for instance, to notify BellSouth that it desires to adopt a term from the CLEC X agreement, and that the term it adopts in June 2002, should be retroactive 16 months, to February 1, 2001.[78]

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[75] Tr., pp. 34-35.
[76] Tr. p. 35.
[77] ALLTEL agrees that when it adopts terms from another CLEC's agreement, it is required to execute an amendment to its agreement with BellSouth. (Tr. at 57-58).
[78] Tr. at 188-189.

Ms. Eve testified that ALLTEL is "legally entitled" to the retroactive benefit of terms it adopts.[79] However, Ms. Eve cited no statute, rule, order, or other legal authority to support her claim.[80] And this Commission is not aware of any legal authority that requires or even allows a CLEC to wait several months (or potentially years) after an agreement is available before notifying the ILEC that it desires to adopt a term from the agreement and to insist that the term be retroactive to the date it was effective for the party who executed the agreement with the ILEC. That situation is exactly what ALLTEL's proposed language would allow ALLTEL to do.

In addition, as Ms. Cox explained, permitting adopted terms to be retroactive would be administratively burdensome. When a CLEC adopts terms, those terms frequently include a new rate. Giving such terms retroactive effect would require the parties to adjust past billing and other actions, which is often difficult to do. In fact, Ms. Cox testified that many CLECs have interconnection agreements with BellSouth that provide that subsequent agreements will be retroactive to the date of the expiration of the old agreement, but choose, nevertheless, to have their new agreements take effect on the date it is signed because of the complexity involved in trying to redo up to several months of billing transactions.[81]

While, there is no legal requirement to give retroactive effect to terms that a CLEC adopts, there are good practical reasons not to permit opt-ins to be effective retroactively. First, there are the administrative entanglements such as billing and

[79] Tr. at 35.
[80] Tr. at 192.
[81] *See* Tr. at 112-113.

adjustments to past actions. Second, for the Commission to approve the position of ALLTEL on this issue would provide a competitive carrier with the opportunity to neglect its due diligence. In exercising due diligence, a competitive carrier should keep abreast of the market and the changes to the market in the area the competitive carrier operates. Due diligence would include regular review of newly filed interconnection agreements. As illustrated in questioning from the Commission, this issue would be moot if ALLTEL does what witness Eve says it does and reviews newly filed agreements regularly to determine if they contain provisions ALLTEL wants to adopt for itself.[82] If ALLTEL is regularly reviewing newly filed agreements, then ALLTEL is conducting due diligence and there would be no need for ALLTEL's proposed language.

This Commission does not believe that such "retroactive" effect to opt-in provisions would be in the public interest as such a scenario is fraught with administrative burdens and could be used in a manner to harm competitive local exchange services. This Commission can discern no useful purpose in approving language that would allow a carrier to delay, possibly for months, notification of the desire to adopt a term from another agreement. If a carrier is regularly reviewing newly filed agreements, the carrier is conducting due diligence and should notify the ILEC as soon as possible of its desire to adopt a more favorable term or condition. If a carrier is not regularly reviewing newly filed agreements, there is no reason to reward such behavior. Furthermore, this Commission recognizes that adoption of ALLTEL's proposal could allow competitive carriers to game the system, which could result in

[82] Tr. at 207.

significant harm to competitive local exchange services. Therefore, the Commission rules that the language proposed by ALLTEL be rejected and directs the parties to include BellSouth's proposed language in their agreement.

Issue 17: Should BellSouth be forced to forego the non-recurring charge for Order Coordination – Time Specific service orders if the parties reschedule the conversion because BellSouth is unable to perform the conversion within one hour of the time specified on the order?

ALLTEL's Position:

According to its Petition, ALLTEL "proposes to maintain current contract language that waives the nonrecurring charge if [BellSouth] misses the time-specific appointment."[83]

BellSouth's Position:

BellSouth opposes ALLTEL's proposal and states its position as

> Alltel's proposal constitutes a liquidated damages provision. The issue of penalties or liquidated damages is not an appropriate subject of arbitration. The Commission lacks the statutory authority to award or order monetary damages or financial penalties. In addition, inclusion of such a provision would necessarily lead to disputes over which party was responsible for a delay, including those which were unavoidable, and BellSouth believes the parties' efforts should be focused on eliminating the delay, not quibbling about its cause. Further, to the extent BellSouth incurs costs in scheduling time specific appointments, it is entitled to recover those costs.[84]

Discussion:

ALLTEL may request that BellSouth perform the work necessary to convert a customer from BellSouth service to ALLTEL service at a specified time on the due date.

[83] Petition, Exhibit B, p. 2.
[84] Response, p. 14.

This is known as an Order Coordination-Time Specific ("OC-TS"). ALLTEL agrees that when BellSouth performs an OC-TS, ALLTEL should pay BellSouth an OC-TS non-recurring charge. However, when an OC-TS is missed, the parties disagree about whether the OC-TS charge should be paid or not. BellSouth's position is that if it is unable to perform the conversion as scheduled, but the conversion is performed later on the same day, BellSouth will waive the OC-TS charge. If, however, ALLTEL reschedules the conversion for a specific time on another day, BellSouth should be permitted to recover the non-recurring charge when the conversion occurs.[85]

ALLTEL disagrees with BellSouth's position and says that BellSouth should not be allowed to recover the charge when BellSouth misses the conversion. ALLTEL asserts that BellSouth has already agreed to its proposed language in both North Carolina and Florida.[86] Further, BellSouth has already conceded that it should waive the charge if BellSouth fails to perform the conversion as scheduled at one point in the day and later successfully performs the conversion on the same day.[87] Yet, as ALLTEL notes, BellSouth maintains it is entitled to the charge if the conversion is performed successfully later that same day.[88] ALLTEL asserts that BellSouth's position makes no sense. In both cases ALLTEL incurs costs regarding the conversion twice, and BellSouth incurs costs only once. Yet, BellSouth is willing to waive the charge in one instance and not in the other.

[85] Tr. at 94.
[86] Tr. at 38.
[87] Tr. at 94.
[88] Tr. at 60 and 94.

Upon consideration of this Issue, the Commission finds that ALLTEL's position is the more reasonable position. As noted by ALLTEL, it makes no sense to maintain that the charge will be waived if the conversion takes place the same day as originally scheduled but not waived if the conversion occurs on another day. ALLTEL incurs costs in having its personnel on site for the conversion even if BellSouth does not appear. ALLTEL must then incur costs to have its personnel on site when the conversion finally occurs. Thus, we find ALLTEL's position, that the OC-TS charge should be waived if BellSouth misses the conversion, regardless of whether the conversion is later completed that same day or another day, reasonable. As ALLTEL must pay an additional fee when it requests a time specific conversion, it is reasonable that the OC-TS charge be waived when the conversion is missed due to fault of BellSouth. This waiver of the OC-TS charge will apply when BellSouth misses the appointment or causes the appointment to be missed. Thus, the Commission directs the parties to include ALLTEL's proposed language in the Interconnection Agreement.

Issue 18: When ALLTEL reports a trouble on a loop and no trouble is found by BellSouth, should BellSouth be required to reopen the same trouble ticket if ALLTEL cannot determine the problem within 48 hours after the ticket is closed?

ALLTEL's Position:

According to its Petition, ALLTEL "[p]roposes that the interval on multiple trouble tickets for same trouble be "bridged" so that escalation/resolution can occur more quickly."[89]

[89] Petition, Exhibit B, p. 2

BellSouth's Position:

By its Response, BellSouth states its position as follows:

> The systems BellSouth utilizes do not allow BellSouth to close and subsequently reopen a trouble ticket. BellSouth is willing to "stop the clock" for up to 24 hours on a trouble ticket at the request of a CLEC if BellSouth reports no trouble found and the CLEC requests additional time to investigate the trouble.[90]

Discussion:

BellSouth asserts that the mechanized systems that it utilizes to process, track, and record trouble ticket activity do not allow BellSouth to close and subsequently reopen the same trouble ticket.[91] Witness Milner for BellSouth testified that BellSouth is willing to "stop the clock" on a trouble ticket for up to twenty-four hours at the request of ALLTEL if BellSouth reports no trouble found and ALLTEL requests additional time to investigate the trouble.[92] This proposal places the trouble ticket in delayed maintenance for up to twenty-four hours, putting the ticket on hold and stopping the clock. If trouble persists, the ticket can be taken out of the delayed maintenance status and work will resume on identifying the problem.[93] However, according to Mr. Milner, the systems do not allow trouble tickets to be reopened once closed, either for BellSouth's own trouble tickets or for a competitor's trouble tickets.[94]

ALLTEL's proposed language "bridging" the interval on multiple trouble tickets for the same trouble requires BellSouth to continue to assist ALLTEL in searching for the

[90] Response, p. 15.
[91] Tr. at 125.
[92] Id.
[93] Tr. at 126.
[94] *See* Tr. at 125-126.

trouble during the delay. ALLTEL states that it is agreeable to the concept of delayed maintenance status proposed by BellSouth.[95] However, ALLTEL wants BellSouth to be obligated to continue to pursue the trouble even after BellSouth has reported no trouble on the ticket.[96]

ALLTEL witness Eve stated that ALLTEL incurs frequent problems with trouble tickets being reported as no trouble, the ticket then being closed, and the customer still reporting trouble.[97] Yet Witness Milner stated that BellSouth conducted a review of ten ticket instances provided by ALLTEL from December 2000 – January 2001.[98] In those ten instances, ALLTEL alleged that the tickets were prematurely closed, yet upon review, BellSouth determined that eight of the ten were closed at ALLTEL's direction.[99]

Upon consideration of this issue, the Commission finds that BellSouth should not be required to reopen trouble tickets, as ALLTEL proposes. First, the mechanized systems BellSouth utilizes to process, track and report trouble ticket activity for CLECs, as well as for BellSouth's retail customers, do not allow BellSouth to close and subsequently reopen trouble tickets. Second, ALLTEL agrees to the concept of delayed maintenance. BellSouth is willing to place a trouble ticket in delayed maintenance status for twenty-four hours when ALLTEL requests it to do so, and is also willing to take it out of delayed maintenance status when ALLTEL reports that the trouble persists and ALLTEL cannot find the cause of the trouble on its network. BellSouth's proposal thus

[95] Tr. at 42.
[96] *Id.*
[97] *See* Tr. at 43.
[98] Tr. at 128.
[99] *Id.*

reflects a cooperative effort between the parties. However, the Commission does not find it appropriate to require BellSouth to continue to test for a problem after the ticket is placed in delayed maintenance. Before the ticket is placed in delayed maintenance, BellSouth has tested for the trouble and reported that the trouble is not on its network. If ALLTEL desires to continue testing for the trouble it may do so for up to the twenty-four hours that the trouble ticket remains in delayed maintenance, but BellSouth should not be obligated to continue to search after it has conducted its testing and reported no trouble.

The Commission therefore determines that BellSouth is not required to hold open a trouble ticket upon request by ALLTEL for longer than 24 hours and that BellSouth is not required to reopen closed trouble tickets. The Commission directs the parties to adopt BellSouth's proposed language in their interconnection agreement.

Issue 23: What terms and conditions should govern BellSouth's provisioning of enhanced extended loops (EELs) and other combinations of network elements to ALLTEL?

ALLTEL's Position:

In its Petition, ALLTEL states its position on Issue 23 as follows:

> [ALLTEL] [p]roposes to utilize the Georgia PSC-ordered language for all [BellSouth] states, which will allow new EEL combinations to be offered regardless of whether such EELs are currently combined for a customer at a particular location. If the requested combination is provided by [BellSouth] in the normal course of business, it should be available to ALLTEL. [ALLTEL] [a]lso proposes to remove the limitation that EELs are only available in Zone Density 1.[100]

[100] Petition, Exhibit B, p. 3.

BellSouth's Position:

BellSouth's Response sets forth its position on Issue 23 as follows:

> BellSouth will make available to ALLTEL EELs and other combinations of network elements that are currently combined in BellSouth network. When unbundled network elements are currently combined in BellSouth's network, BellSouth cannot separate those elements except upon request. 47 C.F.R. § 51.315(b). For example, when a loop and a port are currently combined by BellSouth to serve a particular customer, that combination of elements must be made available to ALLTEL at cost-based rates. BellSouth is not, however, required to combine network elements for CLECs when those elements are not currently combined in BellSouth's network. "It is the requesting carriers who shall 'combine such elements.'" *Iowa Utilities Board v. FCC,* 219 F.3d 744, 759 (8th Cir. 2000), *cert. granted,* 2001 U.S. Lexis 949 (2001). There is no legal basis for the Commission to adopt an expansive view of "currently combined" so as to obligate BellSouth to combine elements for ALLTEL. The FCC made clear in its Third Report and Order in CC Docket No. 96-98 (Nov. 5, 1999), that Rule 51.315(b) applies only to elements that are "in fact" combined. *Id.* ¶ 480. The FCC declined to adopt the definition of "currently combined" advocated by ALLTEL, that would include all elements "ordinarily combined" in the incumbent's network. *Id.*[101]

Discussion:

This issue relates to BellSouth's obligation to combine network elements. The Enhanced Extended Loop ("EEL") is one type of UNE combination - a loop combined with dedicated local transport.

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[101] Response, pp. 17-18. BellSouth has a footnote to the quoted language above. The footnote provides as follows:

> There is one limited exception pursuant to which BellSouth will combine loops and transport elements at cost-based rates when those elements not currently combined in BellSouth's network. In its Third Report and Order, the FCC ruled that, for end users with at least four access lines located in FCC access Zone 1 in a top 50 Metropolitan Statistical Areas (MSAs), an ILEC is not required to unbundle circuit switching so long as it provides non-discriminatory, cost-based access to the enhanced extended link (EEL). This exception does not apply in South Carolina because there is not a top 50 MSA in this State.

Under ALLTEL's position if any two elements are combined anywhere in BellSouth's network, then BellSouth is obligated to combine those elements for ALLTEL everywhere upon ALLTEL's request. BellSouth's position, on the other hand, is that if two specific elements are not presently combined at a particular location, then BellSouth is not required to combine them for ALLTEL. If two elements are in fact combined at a particular location, then BellSouth agrees to provide them to ALLTEL in that fashion at cost-based rates. For example, if BellSouth has combined a loop and a port to provide service to a customer and the customer moves out of her house, BellSouth will provide ALLTEL the combined loop and port for ALLTEL to use to provide service to the person who moves into the house. If there is a new house such that a loop and port have never been combined to provide service to that residence, then BellSouth's position is that it does not have to combine the loop and port for ALLTEL at cost-based rates.

The Commission adopts BellSouth's position for the simple reason that the law does not require BellSouth to combine for ALLTEL elements that are not in fact combined. The Eighth Circuit Court of Appeals recently addressed the FCC rules that required ILECs to combine UNEs for CLECs and that the court had vacated previously. The Eighth Circuit Court of Appeals held that those rules should remain vacated. The court stated:

> Section 252(c)(3) specifically addresses the combination of network elements. It states, in part, 'an incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service.' Here, Congress has directly

> spoken on the issue of who shall combine previously uncombined network elements. **It is the requesting carrier who shall 'combine such elements.' It is not the duty of the ILECs to 'perform the functions necessary to combine unbundled network elements** in any manner' as required by the FCC's rule. We reiterate what we said in our prior opinion. [T]he Act does not require the incumbent LECs to do *all* the work.'(emphasis added).[102]

ALLTEL did not attempt to explain why this Commission should not follow the law as set forth by the Eighth Circuit and the FCC. In fact, ALLTEL's witness did not even mention the Eighth Circuit decision or the FCC's *Third Report and Order*. Instead, Ms. Eve merely requested that this Commission adopt an order issued by the Georgia Public Service Commission, an order which predates the Eighth Circuit's decision, requiring BellSouth to make available to CLECs any combination of facilities which is ordinarily combined in BellSouth's network.[103] Furthermore, Ms. Eve did not advise this Commission that the Georgia Commission acknowledged in its order that the UNE combination issue was then pending before the Eighth Circuit, and that the Georgia Commission stated that "if the Eighth Circuit Court of Appeals determines that ILECs have no legal obligation to combine UNEs under the Federal Act, the Commission will reevaluate its decision . . . ."[104]

This Commission addressed a similar issue in an earlier arbitration between BellSouth and ITC^DeltaCom. In its October 4, 1999, order in that case, this Commission stated that "[n]either the 1996 Act nor the FCC rules as presently in effect

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[102] *Iowa Utils. Board v. FCC*, 219 F.3d 744, 759 (8th Cir. 2000), *cert. granted,* 2001 U.S. Lexis 949 (2001); *see also* FCC's *Third Report and Order* in CC Docket No. 96-98 (Nov. 5, 1999) at ¶ 480 (stating that ILECs are required to provide EELs only when the loop is "in fact" connected to the transport).
[103] *See* Tr. at 46.
[104] *See* Tr. at 101 (citing Georgia Order at 22).

require the incumbent LECs to combine network elements on behalf of CLECs. . . ."[105] Subsequent to this Commission's order in the ITC^DeltaCom arbitration, both the FCC and the Eighth Circuit have confirmed that ILECs have no obligation to combine UNEs for CLECs.

More recently than 1999, this Commission ruled on this precise issue in another arbitration proceeding. In Order No. 2001-286, dated April 3, 2001, this Commission found "that BellSouth is not required to combine network elements that are not already in fact combined in its network" and ruled "that BellSouth is obligated to provide combinations to IDS only where such combinations currently, in fact, exist and are capable of providing service at a particular location."[106] In reaching that decision in the *SCPSC IDS Arbitration Order*, the Commission analyzed the FCC rules, the FCC's *UNE Remand Order*, and the Eighth Circuit Court of appeals decision in *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000). The Commission stated its analysis as follows:

> The rules that would most obviously support IDS's position are 51.315(c) (which would require BellSouth, upon request of IDS, to "perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in [BellSouth's] network . . . .") and Rule 51.315(d) (which would require BellSouth, upon request of IDS, to "combine unbundled network elements with the elements possessed by [IDS] in any technically feasible manner."). However, both of these rules have been vacated by the Eighth Circuit Court of Appeals.[107]

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[105] *See* Tr. at 100 (citing Order No. 1999-690, pp. 35-36.

[106] "Order On Arbitration," (Order No. 2001-286)(April 3, 2001) In Re Petition of IDS Telcom, LLC for Arbitration of a Proposed Interconnection Agreement with BellSouth telecommunications, Inc. Pursuant to 47 U.S.C. Section 252(b), SC PSC Docket No. 2001-19-C, p. 19. (hereafter *"SCPSC IDS Arbitration Order"*).

[107] *See Iowa Utilities Board v. FCC*, 219 F.3d 744, 759 (8th Cir. 2000)("We are convinced that rules 51.315(c)-(f) must remain vacated.").

Additionally, the language the FCC subsequently used in its *UNE Remand Order* provides guidance on this issue. In that Order, the FCC stated "[t]o the extent that an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbents to provide such elements to requesting carriers in combined form."[108] In the very next sentence, the FCC stated that "in this Order, we neither define the EEL as a separate unbundled network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined' . . . ."[109] Later in that same Order, the FCC stated:

> In particular any requesting carrier that is collocated in a serving wire center is free to order loops and transport to that serving wire center as unbundled network elements because those elements meet the unbundling standard, as discussed above. Moreover, to the extent those unbundled network elements are already combined as a special access circuit, the incumbent may not separate them under rule 51.315(b) . . . (Emphasis added.)[110]

Thus, in its most recent Order addressing Rule 51.315(b), the FCC declined to interpret the rule as requiring incumbents to combine unbundled network elements that are "ordinarily combined." Instead, the FCC confirmed that the rule applies only to unbundled network elements that "in fact" are "already combined."

Subsequently, the Eighth Circuit released its July 18, 2000 opinion. In that opinion, the Court clearly explained that

> [In section 251(c)(3) of the 1996 Act], Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall 'combine such elements.' It is not the duty of the ILECs to 'perform the functions necessary to combine unbundled network elements in any manner' as required by the FCC's rules. We reiterate what we said in our prior opinion: '[T]he Act does not require the incumbent LECs to do all the work.'"

Iowa Utilities Board v. FCC, 219 F.3d 744, 759 (8th Cir. 2000) (emphasis in original). The Eighth Circuit was clear in its ruling that

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[108] *UNE Remand Order,* ¶480. (emphasis added).
[109] *Id* (Emphasis added).
[110] *Id.* at ¶486.

> incumbents, like BellSouth, are not required to combine network elements at the request of CLECs like IDS.[111]

The analysis conducted by this Commission in the IDS/BellSouth arbitration proceeding as stated in the *SCPCS IDS Arbitration Order* is equally applicable to this issue in the instant proceeding. ALLTEL has presented no evidence or no new argument on the applicable law, that would warrant a reversal of this Commission's decision of April 3, 2001, in the *SCPCS IDS Arbitration Order.* Therefore, in the instant proceeding, the Commission finds BellSouth has no obligation to combine UNEs for ALLTEL when such UNEs are not in fact combined in BellSouth's network and directs the parties to include BellSouth's suggested language in their agreement.

Issue 25: Can ALLTEL petition this Commission for a waiver when it seeks to convert tariffed special access services to UNEs or UNE combinations that do not qualify under any of the three safe harbor options set forth in the agreement?

ALLTEL's Position:

By Exhibit B to its Petition, ALLTEL states its position as "ALLTEL proposes that it may petition either the FCC or the state commission for a waiver of the designated options."[112]

BellSouth's Position:

BellSouth asserts its position in its Response that as

> ALLTEL must petition the FCC for such a waiver. The FCC expressly acknowledged in its Supplemental Order that there may be extraordinary circumstances under which a requesting carrier is providing a significant amount of local exchange service but does

[111] *SCPSC IDS Arbitration Order* at 17-18.
[112] Petition, Exhibit B, p. 3.

> not qualify under any of the three safe harbor options it established in the Supplemental Order and which are set forth in the agreement. It stated: "In such a case, the requesting carrier may always petition the Commission for a waiver of the safe harbor requirements under our existing rules." Supplemental Order ¶ 23. The FCC thus made clear that waiver petitions are to be filed with the FCC. There is no authority to support ALLTEL's proposal that it may petition a State commission for a waiver.[113]

Discussion:

This issue addresses the ability of CLECs to convert special access services to the UNE combination known as the EEL. The FCC addressed this issue in its June 2, 2000, *Supplemental Clarification Order* to its *Third Report and Order* in its Local Competition Docket, and the issue remains the topic of on-going FCC proceedings.[114] In it *Supplemental Clarification Order*, the FCC ruled that a CLEC can convert special access services to UNEs when it is providing a significant amount of local exchange service over the facilities it wishes to convert.[115] The FCC set forth three safe harbor options to determine when a CLEC is providing a significant amount of local usage over facilities.[116] It also recognized that there may be circumstances when a CLEC is providing a significant amount of local service but does not qualify under any of the three safe harbor options. The FCC stated that "[i]n such a case, the requesting carrier may always petition the **Commission** for a waiver of the safe harbor requirements under

[113] Response, pp. 18-19.
[114] "Supplemental Order Clarification," *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, FCC 00-183, at ¶¶ 8, 21. (rel. June 2, 2000) (hereafter "*Supplemental Order Clarification*").
[115] *Supplemental Order Clarification,* ¶ 8.
[116] *Id.* at ¶¶ 21-23.

our existing rules."[117] (emphasis added). The FCC thus made clear that a requesting carrier could petition the FCC for a waiver. The FCC did not say anything in the *Supplemental Clarification Order* (or elsewhere) to indicate that carriers may petition state commissions for a waiver.

ALLTEL asserts that this Commission has the authority to grant a waiver and provide for an alternative way to convert this facility. ALLTEL argues that since the FCC recognized circumstances under which a requesting carrier is providing a significant amount of local exchange service but otherwise does not qualify under any of the existing options, the FCC established that a requesting carrier may petition either the FCC or a this commission, a state commission. ALLTEL did not cite to any authority in support of its proposal that it should be permitted to file waiver petitions with this Commission. Rather, Ms. Eve declared simply that BellSouth "wants to limit ALLTEL's opportunity to such relief to the FCC."[118]

The Commission does not agree with ALLTEL's position. The FCC specifically stated that waiver petitions are to be filed with the FCC, and there is no authority allowing petitions to be filed with this or any other State commission. In its *Supplemental Order Clarification*, the FCC stated

> We clarify that the three alternative circumstances described above represent a safe harbor for determining the minimum amount of local exchange service that a requesting carrier must provide in order for it to be deemed "significant." We acknowledge that there may be extraordinary circumstances under which a requesting carrier is providing a significant amount of local exchange service but does not qualify under any of the three options. In such a case,

[117] *Id.* at ¶ 23.
[118] Tr. at 48.

> the requesting carrier may always petition the Commission[119] for a waiver of the safe harbor requirements under our existing rules.[120]

The FCC clearly stated that a requesting carrier could petition the Commission, meaning the FCC. The FCC did not add any qualifying language allowing state commissions to address this type of petition. Clearly, if the FCC intended for state commissions to consider petitions for waivers regarding the conversions of special access services to UNEs, the FCC would have clearly provided for such a circumstance in its orders. As it is, the FCC has acknowledged that further proceedings on this issue are needed, and the FCC has instituted such a proceeding. Further, the FCC acknowledged the need to maintain the status quo and stated in the *Supplemental Order Clarification* that "[t]he local usage options we adopt below thus provide a safe harbor that allows the Commission [i.e. the FCC] to preserve the status quo while it examines the issues in the *Fourth FNPRM* in more detail."[121]

The issue of converting tariffed special access services to UNE combinations is currently the subject of further proceedings before the FCC. Further, the plain language of the *Supplemental Order Clarification* provides for requesting carriers to petition the FCC, not a state commission, for a waiver. In addition, the uncertainties surrounding this issue, as well as the complexities involved, support the position that the FCC should be the only body allowed to grant petitions on this issue at this point in time to ensure that this developing area of law remains consistent. Therefore, the Commission directs the

[119] The use of the word "Commission" in an FCC order refers to the FCC.
[120] *Supplemental Order Clarification* at ¶ 23.
[121] *Id.* at ¶ 21.

parties to include BellSouth's suggested language on this issue in their Interconnection Agreement.

Issue 34: Can ALLTEL require BellSouth to install an access card security system?

ALLTEL's Position:

ALLTEL's position, as stated in its Petition, Exhibit B, is that ALLTEL "proposes to continue contract language (Sect, 11.6 & 11.7 which requires utilization of an access card security system and to ensure that the collocation site is adequately secured and monitored to prevent unauthorized entry."[122]

BellSouth's Position:

BellSouth's Response contains the following position with regard to this issue:

> No. The FCC has recognized that adequate security for both ILECs and competing providers is important. See First Report & Order, *In the Matters of Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 (Mar. 31, 1999) ("Advanced Services Order"), at ¶ 46. The FCC left it to the ILEC to determine what particular security measures are reasonable in each circumstance. *Id.*, ¶ *48.* BellSouth is not obligated to install specific types of security arrangements upon ALLTEL's demand. To require this could result in several CLECs desiring different security arrangements and BellSouth being obligated to install multiple methods of protecting its premises to satisfy each CLEC's individual preferences.[123]

Discussion:

ALLTEL proposes language for inclusion in the Interconnection Agreement that

[122] Petition, Exhibit B, p. 4.
[123] BellSouth Response, p. 21.

would require BellSouth to install an access security system capable of tracking and reporting all entrances and exits in every premise where ALLTEL collocates. BellSouth objects to the inclusion of ALLTEL's proposed language. ALLTEL states that a prior damaging experience with BellSouth in one of its collocation area provides the need for this type of security system. Further, ALLTEL asserts that the language is reasonable as the proposed language is the same language in amendments to interconnection agreements with BellSouth in North Carolina and Florida.

The FCC has recognized that the ILEC, not collocating CLECs, should determine what particular security measures are reasonable in each circumstance.[124] The D.C. Circuit Court of Appeals likewise held that the ILEC should retain control over its premises as long as reasonable collocation is offered.[125] Thus, BellSouth is not obligated to install specific types of security arrangements upon ALLTEL's demand. ALLTEL does not cite any legal authority that supports its position that a CLEC may dictate to the ILEC which security measures are appropriate.

ALLTEL's argument in support of its position that BellSouth should be required to install access card readers in every office where ALLTEL collocates is that such a provision is included in the companies' agreements covering North Carolina and Florida. BellSouth provided testimony that the North Carolina and Florida agreements referred to by Ms. Eve cites were executed in 1997and expired in 1999.[126] There is no requirement that BellSouth (or ALLTEL) renew all provisions from a prior agreement.

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[124] *See* First Report and Order, *In The Matter of Deployment of Wireline Service Offering Advanced Telecommunication Capability,* CC Docket No. 98-147 (March 31, 1999) at ¶ 46.
[125] *See GTE Service Corp. v. FCC,* 209 F.3d 416 (D.C. Cir. 2000).
[126] Tr. at 79.

Further BellSouth witness Cox testified that BellSouth's position on this issue-- that ALLTEL cannot dictate the specific type of security measures that BellSouth implements in BellSouth's premises -- is the same in this arbitration as BellSouth's position on this issue in its current arbitrations with ALLTEL in North Carolina and Florida.[127] The fact that BellSouth and ALLTEL agreed to certain language four years ago is not relevant to this Commission's consideration of these issues today. There have been numerous industry changes, FCC rulings and court decisions since 1997, and the parties must be free to take those changes into account in formulating current policies that govern the negotiation of current agreements. In contradiction to those expired agreements in North Carolina and Florida are the parties' most recent negotiated agreements, which include the agreement BellSouth and ALLTEL executed for South Carolina in March 2000. These more recent agreements do not require BellSouth to install access card readers.

Clearly, the FCC has provided that the ILEC makes the determination concerning reasonable security measures. Just as clearly, reasonable security measures are governed by the circumstances of each case. While ALLTEL asserts a prior damaging experience, ALLTEL does not provide any evidence that the damaging experience occurred in South Carolina. Thus there is no evidence that circumstances warrant the access security system requested by ALLTEL. Further, to allow CLECs to request different security measures could result in an ILEC being required to install multiple methods of security at the same

[127] *Id.*

location. Such a system is neither efficient nor reasonable and could invite abuse and wastefulness.

The Commission therefore holds that BellSouth is not obligated to install access card readers upon ALLTEL's demand. We order the parties to include BellSouth's proposed language concerning this issue in their agreement.

Issue 39: Should BellSouth's Products and Services Interval Guide be incorporated into the interconnection agreement?

ALLTEL's Position:

ALLTEL proposes to insert into the Interconnection Agreement the BellSouth provisioning intervals for resale and unbundled network elements currently found in the BellSouth's Products and Service Interval Guide, Issue 3, July 2000.[128]

BellSouth's Position:

By its Response, BellSouth states its position that it should not be required to incorporate BellSouth's Products and Services Interval Guide into the Interconnection Agreement. BellSouth states

> there is no requirement that BellSouth attach its Product and Services Interval Guide to the Agreement. The Guide provides CLECs with BellSouth's target intervals for provisioning. These intervals may change, and do change over time, for several reasons, including process improvements and customer (CLEC) input. BellSouth needs to maintain the flexibility to change these intervals so as to better serve its wholesale customers and to allow them to better serve their end user customers without the unnecessary burden of having to amend every one of its interconnection agreements each time an interval is changed.[129]

[128] Petition, Exhibit B, p. 5.
[129] Response, pp. 22-23.

Discussion:

According to ALLTEL, Issue 39 concerns BellSouth's ordering interval "guides" or "targets," which are currently web-based and may be changed by BellSouth with no prior notice to ALLTEL. ALLTEL apparently desires to have the ability to bargain for different target intervals or to negotiate for different intervals when the target intervals may be lengthened, but ALLTEL does not contest target intervals that may be shortened. Further, ALLTEL states that it relies on the targeting intervals to provide its customers with a reasonable expectation of when service will be converted.[130]

According to BellSouth, the Products and Services Interval Guide provides target provisioning intervals for various products and services.[131] The target intervals are established to provide CLECs with a reasonable expectation as to when a product or service can be provided under normal conditions.[132]

Both parties acknowledge that the Products and Services Interval Guide contains target provisioning intervals. As noted above, BellSouth provides target intervals to CLECs in order to provide them with a reasonable expectation as to when a product or service will normally be provisioned, assuming no extraordinary conditions.[133] However, as the BellSouth Products and Services Interval Guide provides only target provisioning intervals, this Commission understands that the provisioning intervals could change. While ALLTEL wants to rely upon the target provisioning intervals, ALLTEL is not without means to keep abreast of changes. The Products and Services

[130] Tr., p. 73.
[131] Tr, p. 104.
[132] *Id.*
[133] *Id.*

Interval Guide is posted on the website, and ALLTEL can certainly monitor the website for changes to the Products and Services Interval Guide. ALLTEL points to no provision in the Act or to any FCC rule or other authority that requires BellSouth to make the target intervals in its Products and Services Interval Guide part of an interconnection agreement.

BellSouth is required to provide CLECs with nondiscriminatory access to its services and network elements. Whether BellSouth meets the target intervals set forth in the Products and Services Interval Guide is not necessarily indicative of whether BellSouth is providing nondiscriminatory access to its network. Requiring the Products and Services Interval Guide to be a part of the Interconnection Agreement would not aid in determining whether nondiscriminatory access is being achieved. This Commission believes that requiring the Products and Services Interval Guide to be included in the Interconnection Agreement would be a cumbersome and ineffectual addition to the Interconnection Agreement resulting in amendments to the Interconnection Agreement every time a target provisioning interval is changed. The Commission finds such an addition to the Interconnection Agreement to be wholly unnecessary. This Commission finds that the proposal to include BellSouth's Products and Services Interval Guide as a part of the Interconnection Agreement would be unduly burdensome to the parties, and the Commission will not impose that sort of burden on the parties.

As ALLTEL has not cited any authority that requires BellSouth to make its Products and Services Interval Guide a part of its interconnection agreements, and as the addition of the Products and Services Interval Guide to the Interconnection Agreement

could result in cumbersome, burdensome, and unnecessary amendments to the Interconnection Agreement, the Commission adopts BellSouth's position on this issue. Therefore, on this issue, we rule that BellSouth's proposed language should be included in the Interconnection Agreement.

Performance Measures Issues (Issues 40 and 42):

Issue 40: When should enforcement mechanisms for service quality measurements become effective?

ALLTEL's Position:

ALLTEL "[p]roposes that the Effective Date of Attachment 9 is unrelated to any FCC order granting [BellSouth] intraLATA toll authority pursuant to Section 271 of the [1996]Act. Attachment 9 should become effective concurrently with the Interconnection Agreement."[134]

BellSouth's Position:

According to its Response, BellSouth states its position on this issue as follows:

> It would be inappropriate for enforcement mechanisms to become effective any time prior to BellSouth obtaining permission to enter the interLATA market in South Carolina. The FCC has identified the implementation of enforcement mechanisms and penalties to be a condition of 271 relief. The FCC's view of enforcement mechanisms and penalties is that they are an appropriate incentive to ensure that an ILEC continues to comply with the competitive checklist set forth in Section 271 of the 1996 Act after it obtains interLATA relief. The FCC has never indicated that enforcement mechanisms and penalties are either necessary or required to ensure that BellSouth meets is obligations under Section 251 of the 1996 Act.[135]

[134] Petition, Exhibit B, p. 5.
[135] Response, p. 23.

Issue 42: What is the relevant period for determining whether penalties for failure to meet service quality measurements should be assessed?

ALLTEL's Position:

ALLTEL's position , as stated in Exhibit B of its petition is "[a]ll references to the term "quarter" should be deleted [and] [c]onsecutive months of noncompliance are not required to be within a given quarter."[136]

BellSouth's Position:

BellSouth's position is as follows:

> This is a performance measurements issue and should be referred to the generic performance measurements docket. In that docket, BellSouth will present an enforcement plan that will provide appropriate incentive to ensure that BellSouth does not "backslide" with respect to its competitive checklist items after it gains permission to enter the interLATA long distance market in South Carolina. See BellSouth's position with respect to Issue No. 40.[137]

Discussion:

Issues No. 40 and No. 42 are performance measurements issues. These issues will be considered in the Commission's generic performance measurements proceeding, Docket No. 2000-139-C.[138] There is, therefore, no reason for the Commission to address these issues, which will affect all CLECs operating in South Carolina, in the context of this two-party arbitration.

BellSouth agrees to include in its interconnection agreement with ALLTEL service quality measurements ("SQMs") that will determine whether BellSouth is

[136] Petition, Exhibit B, p. 5.
[137] Response, pp. 23-24.
[138] *See* Tr. at 54.

providing ALLTEL with nondiscriminatory access.[139] The enforcement mechanisms that ALLTEL is requesting this Commission to adopt in this arbitration would require BellSouth to pay ALLTEL penalties if BellSouth fails to meet the standards set forth in the SQMs. Performance penalties are not required under the Act.[140] Moreover, performance penalties are not appropriate until either BellSouth obtains permission pursuant to Section 271 of the Act to provide interLATA services in South Carolina or the Commission makes such a determination in the context of the generic performance measurements proceeding in Docket No. 2000-139-C.[141] Furthermore, the FCC has identified enforcement mechanisms as an additional incentive to ensure that RBOCs, including BellSouth, continue to comply with the competitive checklist set forth in Section 271 after the RBOC obtains interLATA relief.[142]

ALLTEL's claim that BellSouth has no incentive to provide ALLTEL with nondiscriminatory access in the absence of performance penalties simply is without merit. First and foremost, BellSouth is obligated under the 1996 Act to provide nondiscriminatory access. BellSouth's obligations are not contingent upon enforcement mechanisms. The incentive to gain interLATA relief in South Carolina is itself a powerful incentive for BellSouth to comply with the 1996 Act. As Ms. Cox explained, ALLTEL has several options to pursue if it believes that BellSouth is not complying

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[139] Tr., p. 107.
[140] Tr., p. 106.
[141] *Id.*
[142] *Id.* and See FCC Orders granting interLATA relief - *Bell Atlantic New York 271 Order* at ¶¶ 429-30; *Texas 271 Order* at ¶¶ 420-21; and *In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma,* CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, (rel. Jan. 22, 2001) at ¶ 353.

with its obligations. ALLTEL, or any other CLEC, may avail itself of the FCC complaint process, the Commission complaint process, or other legal action.[143] Further, ALLTEL has not alleged that BellSouth has failed to meet its obligations under the 1996 Act, and its claims about the necessity for enforcement mechanisms are unsupported.

As performance measurements, that include performance penalties, are not required under the 1996 Act, and as this Commission has an established docket to address the issue of performance measurements, the Commission finds that Issues No. 40 and No. 42 should be deferred to Docket No. 2000-139-C. These issues concerning performance measurements will impact all the CLECs operating in South Carolina as well as ILECs, other than BellSouth. It is more appropriate to address these issues in the context of that generic proceeding than in this arbitration proceeding involving only these two parties. In the interim, the BellSouth SQM's as well as ALLTEL's recourse through this Commission's complaint process and the FCC's complaint process will provide sufficient recourse to the parties. Therefore, the Commission orders these issues referred to its generic performance measurements proceeding in Docket No. 2000-0139-C.

V. CONCLUSION

The parties are directed to incorporate the language in the Interconnection Agreement as described herein.

This Order is enforceable against ALLTEL and BellSouth. BellSouth affiliates which are not incumbent local exchange carriers are not bound by this Order. Similarly, ALLTEL affiliates are not bound by this Order. This Commission cannot enforce

[143] Tr., p. 107.

contractual terms upon a BellSouth or ALLTEL affiliate which is not bound by the 1996 Act.

This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)